

DOCKET FILE KEY ORIGINAL

SEP 3 11 30 AM '96

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 96-175
Table of Allotments,) RM-8850
FM Broadcast Stations.)
(Strasburg, Colorado))

NOTICE OF PROPOSED RULE MAKING

Adopted: August 23, 1996

Released: August 30, 1996

Comment Date: October 21, 1996

Reply Comment Date: November 5, 1996

By the Chief, Allocations Branch:

1. Before the Commission for consideration is a petition for rule making filed by J.P.I. Radio, Inc. ("petitioner") requesting the allotment of Channel 249C3 to Strasburg, Colorado, and its reservation for noncommercial educational use. Petitioner stated its intention to pursue its interest if Channel 249C3 is allotted to Strasburg, Colorado, as requested.¹

2. In support of its proposal petitioner advises that the proximity of Station KRMA-TV, Channel 6, Denver, Colorado, precludes the availability of noncommercial educational channels in the reserved band from which a Class C3 channel could operate to provide service to Strasburg.

3. Commercial channels are not reserved customarily for noncommercial use in allotment proceedings unless channels in the reserved portion of the FM band (Channels 201-220) are unavailable due to VHF television Channel 6 interference, or they are precluded due to the presence of Canadian or Mexican allotments. *See generally, Butte, Montana*, 9 FCC Rcd 2180 (1994); *Buhl, Minnesota*, 9 FCC Rcd 2606 (1994). A staff engineering analysis has confirmed the unavailability of noncommercial educational channels in the reserved band for allotment to Strasburg due to potential interference to Station KRMA-TV, Channel 6, Denver, Colorado.

¹ Although petitioner's request was signed and an address provided, it failed to include an affidavit verifying that the statements contained in the petition are accurate to the best of its knowledge. Section 1.52 of the Commission's Rules requires that the original of any document filed with the Commission by a party not represented by counsel be signed and verified by the commenting or petitioning party and its address stated. In the absence of such verification, the petition may be dismissed. Section 1.401(b) of the Commission's Rules concerning rule making proceedings places petitioners on notice that their proposal must conform with the requirements of Section 1.52 regarding subscription and verification. *See also Amendment of Sections 1.420 and 73.3584 of the Commission's Rules Concerning Abuses of the Commission's Processes*, 5 FCC Rcd 3911, 3919 n.41 (1990). The petitioner is requested to remedy the omission in its comments.

4. Having determined that the petitioner's proposal does meet the necessary criteria to reserve a channel in the commercial band, we will propose to allot Channel 249C3 to Strasburg, Colorado, and to reserve the channel for noncommercial educational use. Channel *249C3 can be allotted to Strasburg in conformity with the minimum distance separation requirements of Section 73.207(b)(1) of the Commission's Rules provided the transmitter therefor is located at least 10.9 kilometers (6.8 miles) east of the community, at coordinates 39-43-13 North Latitude and 104-11-58 West Longitude.

5. In view of the above, we will solicit comments on the proposed amendment to the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, with respect to Strasburg, Colorado, as follows:

<u>City</u>	<u>Present</u>	<u>Channel No.</u> <u>Proposed</u>
Strasburg, Colorado	272A ²	272A,*249C3

6. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

7. Interested parties may file comments on or before October 21, 1996, and reply comments on or before November 5, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, as follows:

J.P.I. Radio, Inc.
Attn: Jarel Pittman
12104 Old Hwy 169
Hibbing, MN 55746

8. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification that Sections 603

²Channel 272A was allotted to Strasburg, Colorado, in the context of MM Docket No. 89-61, at coordinates 39-37 North Latitude and 104-15-25 West Longitude. *See Report and Order*, MM Docket No. 89-61, 4 FCC Rcd 7570 (1989), 54 FR 45735, October 31, 1989. Although a construction permit has been issued to Station KAGM(FM) to operate on Channel 272A at Strasburg (File No. BPH-941108JC, as modified BMPH-950908IG), Channel 272A does not appear in 47 CFR 73.202(b), the Table of Allotments, at that community. Therefore, while advising of the omission herein, we shall make the editorial change to the FM Table of Allotments at Strasburg to include Channel 272A at the conclusion of this proceeding.

and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

9. For further information concerning this proceeding, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIXMM Docket No. 96-175
RM-8850

1. Pursuant to authority contained in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off Procedures. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules.)

(b) With respect to petitions for rule making which conflict with the proposal(s) in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments: Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239), at its headquarters, 1919 M Street, N.W., Washington, D.C.